

## Message Text

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ACTION STR-07

INFO OCT-01 STRE-00 ISO-00 AGRE-00 CEA-01 CIAE-00  
COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10 INT-05  
L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05  
SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02 OMB-01  
DOE-15 AF-10 ARA-10 EA-10 EUR-12 NEA-11 JUSE-00  
/154 W

-----129485 262049Z /14

P 261859Z MAY 78

FM USMISSION GENEVA

TO SECSTATE WASHDC PRIORITY 0179

ALL EC CAPITALS

AMEMBASSY HELSINKI

AMEMBASSY OSLO

AMEMBASSY OTTAWA

AMEMBASSY STOCKHOLM

AMEMBASSY TOKYO

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USMTN USEEC USOECD

STR FOR ACTION

STR PASS CODEL

E.O. 11652: N/A

TAGS: MTN, ETRD, EEC

SUBJECT: DISCUSSION ON DRAFT SUBSIDY/COUNTERVAILING

- NON-PAPER

1. SUMMARY: U.S. TEAM MET WITH EC REPS AND FURTHER  
REFINED JOINTLY DEVELOPED NON-PAPER ON SUBSIDIES/COUNTER-  
VAILING DUTIES, WHICH EC CHARACTERIZED AS A "GOOD  
BASIS" FOR FUTURE DISCUSSION. DOCUMENT WAS CIRCULATED  
TO CANADIAN, NORDIC AND JAPANESE DELEGATIONS AND SUB-  
JECT TO A BRIEF SESSION EXPLAINING THE NATURE OF THE  
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DOCUMENT AND ENTERTAINING PRELIMINARY QUESTIONS AND  
OBSERVATIONS. U.S. UNDERTOOK TO COMPLETE NON-PAPER  
WITHIN TWO WEEKS AND DISTRIBUTE IT TO OTHER DELS FOR  
A FOLLOWUP PLURILATERAL MEETING. END SUMMARY.

2. ON MAY 22 U.S. TEAM HEADED BY RIVERS (STR) MET WITH  
EC REPS (KLEIN, ET AL) TO REVIEW NON-PAPER DEVELOPED ON

AN INFORMAL BASIS BY U.S. AND EC. EC AND U.S. NOTED THAT MANY ELEMENTS OF THE PAPER ARE UNACCEPTABLE TO ONE SIDE OR THE OTHER, BUT KLEIN CHARACTERIZED THE DOCUMENT AS REPRESENTING A "GOOD BASIS" FOR FUTURE DISCUSSION.

3. DURING COURSE OF REVIEW EC MADE SUGGESTIONS FOR MINOR MODIFICATIONS TO TEXT. BOTH DELS EXPRESSED THE NEED TO FILL IN VOIDS IN CURRENT DOCUMENT REGARDING DISPUTE SETTLEMENT (D/S) AND INJURY CRITERIA. WITH RESPECT TO THE FORMER, U.S. DEL STATED THAT IF THE INTERNATIONAL D/S MECHANISM BROKE DOWN, A COUNTRY SHOULD BE ABLE TO TAKE SOME TYPE OF MEASURE, E.G., A PROVISIONAL MEASURE. SUCH A MEASURE WOULD BE PARTICULARLY APPLICABLE IF THERE WERE A CLEAR CUT CASE OF A POSSIBLE VIOLATION, E.G., WHERE AN EXPORT SUBSIDY HAD BEEN GRANTED. KLEIN OBJECTED TO THIS APPROACH, WITH ABBOTT CLAIMING THAT THE UNITED STATES IS ATTEMPTING TO TURN THE TRADITIONAL D/S MECHANISM AROUND TO PERMIT ACTION WITHOUT INTERNATIONAL APPROVAL. RIVERS PRESSED THE NEED FOR SUCH PROVISIONS SINCE U.S. DOMESTIC INTERESTS HAVE LITTLE CONFIDENCE IN THE INTERNATIONAL D/S MECHANISM. KLEIN CONTENDED THAT THE PROBLEM RESIDED WITH PERSONALITIES INVOLVED AND NOT NECESSARILY IN THE MECHANISM ITSELF. EC SUGGESTED THAT THE FIRST STEP ON THIS ISSUE WOULD BE COMPLETION OF THE D/S PROVISIONS IN THE DOCUMENT.

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4. WITH RESPECT TO INJURY CRITERIA, THE EC SUGGESTED THAT ITS DRAFT NOTES ON INJURY CRITERIA BE USED TO FILL IN THE BLANK SECTION OF THE PAPER. KLEIN EXPLAINED THEIR TWO-STEP APPROACH, THE FIRST STEP WOULD BE A FACT-GATHERING EXERCISE FOR IMPORT STATISTICS, WHILE THE SECOND STEP WOULD INVOLVE AN EXAMINATION OF THE IMPACT OF THE IMPORTS ON THE INDUSTRY. THE CRITERIA SET FORTH IN THE EC PAPER PROVIDE EXAMPLES OF THE KINDS OF FACTORS TO BE CONSIDERED BY A NATIONAL BODY, OR FOR USE IN A MULTILATERAL REVIEW OF A NATIONAL ACTION. ALL THESE CRITERIA, HOWEVER, NEED NOT BE SATISFIED IN ANY CASE. KLEIN DEMONSTRATED SOME FLEXIBILITY WITH RESPECT TO CONCEPTS CONTAINED IN THE EC PAPER, NOTING THAT IMPORTS DEPRIVING AN INDUSTRY OF MARKET GROWTH IN ABSOLUTE TERMS COULD ALSO BE CONSIDERED A FACTOR IN DETERMINING INJURY. THE EC ACCEPTED THE U.S. OFFER TO REDRAFT THE EC NOTES ON INJURY FOR INCLUSION IN THE NON-PAPER.

5. KLEIN COMMENTED THAT THE U.S. DRAFT DEFINITION OF EXPORT SUBSIDY APPEARED TO BE TOO BROAD, ENCOMPASSING BORDER TAX REBATES. RIVERS VOLUNTEERED TO RE-EXAMINE THE DEFINITION WITH THIS IN MIND. ON THE INTERNAL

SUBSIDIES SECTION KLEIN COMMENTED THAT A LISTING OF TYPES OF DOMESTIC SUBSIDIES IS PREFERABLE TO ANY QUANTIFICATION OF SUBSIDY PRACTICES OR QUALITATIVE DESCRIPTION. THESE LATTER APPROACHES, IN KLEIN'S VIEW, CARRY THE IMPLICIT ASSUMPTION THAT EXCEEDING SUCH QUANTITATIVE OR QUALITATIVE LIMITS IS PER SE OBJECTIONABLE.

6. PLURILATERAL DISCUSSION: ON THE FOLLOWING DAY, THE REVISED NON-PAPER WAS DISTRIBUTED TO CANADA, JAPAN, AND NORDIC DELEGATIONS AND GATT SECRETARIAT (LINDEN). A BRIEF MEETING WAS HELD TO INTRODUCE THE DOCUMENT AND DISCUSS A FUTURE WORK PROGRAM. U.S. AND EC INTRODUCED THE DRAFT AS A NON-PAPER, CONTAINING IDEAS OF BOTH DELEGATIONS SOME OF WHICH WERE NOT AGREED. IN VIEW LIMITED OFFICIAL USE

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OF BOTH THE U.S. AND EC, THE DOCUMENT COULD BE USED AS THE BASIS FOR FURTHER DISCUSSION. CANADA'S AMBASSADOR GREY LED THE DISCUSSION REITERATING MANY OF HIS PREVIOUS IDEAS ON SUBSIDIES/CVD ISSUES, BUT ALSO INTERJECTING SOME FRESH THOUGHTS. GREY SUGGESTED PROVISIONS FOR CONSULTATION PRIOR TO INITIATION OF AN INVESTIGATION, TIME LIMITS FOR PROVISIONAL MEASURES (IF INDEED PROVISIONAL MEASURES ARE ACCEPTABLE), A WORKING PARTY TO DRAFT A LIST OF SUBSIDY PRACTICES AND COMPENSATION, AS DETERMINED BY AN INTERNATIONAL D/S MECHANISM, FOR PAST DAMAGE CAUSED BY A SUBSIDY OR ERRONEOUS CVD ACTION. JAPAN LIMITED OFFICIAL USE

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(UKAWA) AND NORDICS (EKBLOM) STATED THAT THEY GENERALLY SHARED THE CANADIAN IDEAS ON THESE ISSUES.

7. DEFINITION OF EXPORT SUBSIDY: GREY INDICATED THAT CANADA WAS NOT PREPARED TO ADOPT A GENERAL DEFINITION OF EXPORT SUBSIDIES. HIS ALTERNATIVE WOULD BE TO HAVE A CATCH ALL PHRASE AT THE END OF A LONG LIST OF SUBSIDIES. THIS PHRASE WOULD BE DESIGNED TO ENCOMPASS SUBSIDY PRACTICES SIMILAR TO THOSE LISTED. JAPAN SHARED CANADA'S VIEW, STATING THAT A DEFINITION COUPLED WITH A LIST REPRESENTS THEIR GREATEST DIFFICULTY WITH THE DRAFT NON-PAPER. KLEIN REMARKED THAT WHILE THE CANADIAN IDEAS WERE CONSTRUCTIVE, HE HAD NOT CLOSED THE DOOR ON THE POSSIBILITY OF A DEFINITION, AS LONG AS IT DID NOT COVER CERTAIN PRACTICES (E.G., BORDER TAX REBATES). RIVERS POINTED OUT THAT THE PROBLEM WITH THE LIST APPROACH IS THAT THERE IS LITTLE PRACTICAL POSSIBILITY TO AMEND THE LIST, TAKING INTO ACCOUNT NEW PRACTICES.

8. PROVISIONAL MEASURES: AS IN THE BILATERAL SESSION, U.S. BROACHED THE ISSUE OF PROVISIONAL MEASURES. RIVERS CONTENDED THAT IN ADDITION TO PROVISIONAL MEASURES UNDER THE GATT ARTICLE VI CVD TRACK, IF THE INTERNATIONAL D/S PROCEDURES UNDER THE SECOND TRACK APPROACH DID NOT RESULT IN A DECISION WITHIN A GIVEN TIME, A COUNTRY SHOULD BE ABLE TO TAKE APPROPRIATE PROVISIONAL ACTION. RIVERS DISAGREED WITH GREY'S ASSERTION THAT PROVISIONAL MEASURES WOULD ENTAIL A NEW RESTRICTIVE FACTOR IN INTERNATIONAL TRADE, NOTING THAT THE RIGHT ALREADY EXISTS IN CURRENT GATT ARTICLE VI RULES. KLEIN OPINED THAT PERHAPS A COUNTRY COULD ENVISAGE A SITUATION WHERE STEPS WERE NECESSARY TO PROTECT ITS INTEREST.

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PROVISIONS FORMULATED ALONG THE LINES OF KLEIN'S SUGGESTION WERE CONSIDERED BY THE U.S. AS A POSSIBLE BASIS FOR APPROACHING THIS ISSUE.

9. FUTURE WORK: RIVERS INDICATED THE U.S. WOULD UNDER-TAKE TO COMPLETE THE DRAFT NON-PAPER AND CIRCULATE IT TO THE INFORMAL GROUP WITHIN TWO WEEKS. FYI: AS IN PREVIOUS DRAFTING EXERCISES, EC WILL PARTICIPATE ON A PURELY INFORMAL BASIS. END FYI. AS A FIRST STEP, THE U.S. SUGGESTED THAT THE INFORMAL GROUP DECIDE WHETHER THE GENERAL APPROACH TO SUBSIDIES/ CVD CONTAINED IN THE PAPER IS ACCEPTABLE AND, SECONDLY, WHETHER THE PAPER AFFORDS A BASIS FOR FUTURE DISCUSSION. (IN A PRIVATE CONVERSATION, UKAWA TOLD RIVERS THAT HE THOUGHT THE GOJ COULD USE THE PRESENT DRAFT AS A BASIS FOR DISCUSSION.) IF THERE WERE AGREEMENT ON THESE POINTS, A WORKING GROUP COULD BE ESTABLISHED ALONG THE LINES SUGGESTED BY GREY, TO DEVELOP A LIST OF SUBSIDIES. IN ADDITION, WORK COULD PROCEED ON FURTHER DEVELOPING THE TEXT. IN RESPONSE TO A GATT SECRETARIAT QUESTION ON THE POSSIBILITY OF A 7 PLUS 7 MEETING, RIVERS INDICATED A PREFERENCE TO HAVE AN AGREED APPROACH BY THE INFORMAL DC GROUP BEFORE SUCH A MEETING. IN ADDITION, GREY SAID THAT SPECIAL AND DIFFERENTIAL TREATMENT FOR DEVELOPING COUNTRIES AND THE TREATMENT OF STATE TRADING COUNTRIES SHOULD BE ADDRESSED BEFORE ANY 7 PLUS 7 MEETING.

9. DRAFTED BY WALLAR. MCDONALD

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## Message Attributes

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**Channel Indicators:** n/a  
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**Review Markings:**  
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